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ABSTRACT

In the past 20 years, counselors have become increasingly aware of the legal and ethical issues related to counseling. This paper addresses the various legal and ethical topics relevant to school counselors. Since counselors need to make informed decisions based on statutes, codes of ethics, professional standards, community expectations, and clinical judgment, some of the more common ethical dilemmas are discussed here. These include informed consent, client privacy, duty to warn, dual relationships, and computer technology. After outlining the counselor's role and the importance of supervisory safeguards, some key points, of which counselors, supervisors, and administrators should be aware, are identified: (1) Litigation aimed at counselors has increased; (2) School counselors and mental health professionals in clinical settings face similar issues; (3) A school counselor's myriad tasks mandate appropriate supervisory support--clinical supervision should be handled by a counselor who has appropriate training in supervision methods; (4) Counselors' competence in new areas can be gained via in-service training; (5) Counselors should update their knowledge of legal and ethical issues affecting their practices and should consult with the professional association and legal counsel when problems arise. Attention to legal and ethical issues is essential for responsive, comprehensive, and professional service to schools. (RJM)

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Running head: SUPERVISION AS A SAFEGUARD

Legal and Ethical Issues for School Counselors: Supervision as a Safeguard

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Abstract

This article addresses legal and ethical topics relevant to school counselors. It discusses common legal and ethical issues, examines some frequently discussed dilemmas, reviews the role of the school counselor, and contends that supervision is an appropriate professional safeguard for mental health professionals in schools.

Introduction

The Tarasoff case (1976) brought the attention of counselors to the potential that professional practices have for coming under the scrutiny of clients, the profession, the public and the legal system. Although this case has been misunderstood and misquoted (Waldo & Malley, 1992) it remains a reminder of the ramifications that may stem from unethical practice. Since Tarasoff, counselors in all settings have become acutely aware of the legal and ethical issues related to counseling practice. As a response, counselors continue in their search for mechanisms that can help them practice, while minimizing the chance for potential violations of law and ethics.

Prior to a review of the topic, it may be helpful to define the term dilemma as used in this profession. An ethical or legal dilemma occurs when the counselor is uncertain about the course of action to take, and there is potential for conflict (Davis & Mickelson, 1994). The conflict that may arise could have a legal, ethical, moral or professional basis for concern. The counselor needs to make a decision based on the statutes, the code of ethics, professional standards, community expectations, and clinical judgment. Such decisions seldom have a clear-cut answer, rather they require thoughtful deliberation and appropriate consultation prior to a final resolution.

Herlihy and Golden (1990) identify some of the ethical dilemmas frequently discussed as including, informed consent, confidentiality, duty to warn, dual relationships, and computer applications. As these issues have relevance to school counselors, a brief review is appropriate.

Informed Consent

Informed consent should be considered a process rather than an event. It is a process whereby the counselor and client discuss and review the types

of and parameters to treatment. This issue of informed consent is based on the opinion that clients have a right to be properly briefed so that they can make informed choices. This process includes telling the client of counseling processes, consequences of counseling, and possible results of non intervention. In a school setting this is particularly interesting in that most clients are minors, and such decisions are left to those not receiving the service, the parent or guardian.

There exist three criteria to assess if informed consent has occurred (Corey, Corey, & Callanan, 1993). The first is that of capacity. This refers to the ability the client has to make rational decisions. If this is lacking, a parent or guardian may make such judgments. The second criteria is comprehension, which refers to the way the counselor gives the client information and checks that it is understood. This information should include risks and benefits of counseling, risks of foregoing treatment, and alternative methods of treatment.

The final criteria of voluntariness takes into account that the client is acting freely in the decision making process, and is legally and psychologically able to give consent. In cases where the counselor is working with individuals who are under the age consent, the guardian in effect becomes the client. This is most interesting, in that at approximately age 15, individual's are developmentally mentally competent yet legally are still considered minors. Informed consent implies that the counselor and client discuss the problem and possible treatment. Prior to the commencement of treatment, the client must give consent, and thereby giving the counselor authority to treat.

If these criteria are satisfied and an agreement is entered into, it should include limitations of confidentiality and perhaps the initial ideas for treatment (Witmer, 1991b). Other dimensions included in the agreement could include the counseling approach, length, frequency and duration of sessions, provisions for re-negotiation, extent of responsibilities, the ACA code of ethics, access to records, and the signatures of all concerned. This increases the likelihood that all parties involved understand the counseling process.

Client Privacy

The nature of counseling means that professionals are privy to private and sensitive personal information. This can present a range of legal and ethical dilemmas for counselors as they balance the responsibility to protect client information, against the perceived or possible need to disclose private details to certain individuals.

Confidentiality refers to the ethical responsibility that counselors have to not disclose client communication discussed in the therapeutic relationship. This issue is bound in ethics and morals rather than on a formal legal basis. When a client receives professional counseling they expect that personal details and information remain within the counseling relationship, and that it will only be in critical circumstances that the counselor will make certain details know to others.

Privileged communication is a concept narrower in scope than confidentiality, and is a legal precept whereby the client's rights to privacy, even in a public forum (e.g. the witness stand) is protected. Counselors, unlike spouses, physicians, attorneys and clergy, do not necessarily have privileged communication with clients. Currently, school counselors have

privileged communication in fewer than half of the states in this country (Tompkins & Mehring, 1993). In legal proceedings counselors have a legal responsibility to disclose specific information known to them.

Kitchener's (1984) ethical principle of beneficence has relevance in this issue of privacy. To be able to contribute to the welfare of the client the counselor must maintain a therapeutic relationship. Counselors should behavior in a manner in which they can contribute positively to the client's growth and development. Privacy is central to maintaining a healthy relationship with clients, and inappropriate breaches of confidentiality are counterproductive to this process.

Duty to Warn

Counselors are not only justified but are required to warn and protect where there they know of clear and imminent danger. When there is danger to self or others or when there is a mandatory requirement to inform authorities (e.g. child abuse and neglect, murder, suicide, AIDS) the counselor is ethically bound to break confidentiality and take appropriate action (ACA, 1994; Sheeley & Herlihy, 1989; Stadler, 1989). When in doubt, counselors should seek the opinion of a colleague to discuss and review the merits of the particular case in question.

Duty to warn and protect presents the counselor with the dilemma of balancing immediate client welfare, with the best interest of society, simultaneously protecting oneself from legal ramifications (Costa & Altekruse, 1994). In these cases, the ethical principle of fidelity or faithfulness is highlighted (Kitchener, 1984). Clients have faith that confidentiality is the hallmark of the counseling relationship. If a counselor were to betray the client's trust, the loyalty that is central to the helping relationship may be

jeopardized. In such cases, the counselor would be breaching client confidentiality in seeking to warn a potential victim or report a person, yet the priority is still to protect individuals. As was noted in the landmark Tarasoff case, "The protective privilege ends where the public peril begins" (Tarasoff, 1976: 336-337).

The tendency in the area of duty to warn appears to be, "If in doubt, warn". This stems from the marked increase of litigious behavior of individuals, and the resultant damages cases against insufficiently cautious counselors. Recent duty to warn cases stem from violations of confidentiality, incorrect treatment, loss from evaluation and sexual impropriety (Pope & Vasquez, 1991).

Dual Relationships

It is accepted that responsibility for the helping relationship rests with the counselor. That is, the counselor is acutely aware of the dynamics of interpersonal interactions, and the issues related to the helping relationship, hence, essentially controls the process of counseling. This has the potential of placing the counselor in an extremely powerful position. A dual relationship is the immoral, illegal, professionally inappropriate and unethical practice, whereby the combining of incompatible roles occur between counselor and client. Not all dual relationships are professionally inappropriate or unethical though there is the potential for the development of an untherapeutic dimension.

With dual relationships, combining of roles may take the form of any of the following examples: Social/close contact; emotional/sexual activity; and the friend/personal combination. This refers to counselors who have a social, emotional or sexual relationship with a client. In practical terms this

includes the counselor who counsels a friend or has a sexually intimate relationship with a client. Obviously neither of these situations are professionally appropriate.

There are some professionals who contend that such relationships are not automatically doomed to be destructive, yet the majority of practitioners would not support this opinion. The major difficulty with dual relationships includes the imbalance of power, and for this reason alone must be avoided. The counselor usually has more skills and knowledge of interpersonal dynamics as well as confidential client information, whereas the client is unequal in this regard. Another potential difficulty is that the counselor who has a relationship with a client may have less ability to interact therapeutically than might otherwise have been the case.

In cases of sexual or intimate contact with clients, current or former, the ethical code is clear. Such a relationship is inappropriate at any time, during or after personal counseling has taken place (ACA, 1994). The reality of the human response is that at some time sexual attraction will occur from counselor to client or vice versa, yet there should never be erotic touching in the helping relationship.

It seems likely that dual relationships with clients can be avoided. No social, close or sexual relationship need occur, and it is reasonable to expect that a counselor should explain several things to a client in the event of an attraction developing. In spite of the intimate feelings the counselor or client may have, the client should be informed of the significant ethical problems involved with personal counselor/client relationships. The counselor should reassure the client and explain the ethical responsibility counselors have to clients in particular, and the counseling profession generally.

Corey, Corey, and Callanan (1993) also caution about the implications with forming social and personal relationships with clients. They summarize the concerns in this area by suggesting the argument that intimate relations with clients is an abuse of the power counselors have by virtue of their position. They also point out that the codes of ethics of all helping professions have some ethical standards about the inappropriateness of sexual relations with clients.

Computer Technology

In recent years many personal and academic tests, and career exploration packages have been produced in computer program format (Talbutt, 1988). Although a host of legal and ethical issues arise from these areas, they tend to be quite specialized and out of the scope of this article. The focus of this section is on the more generic topic of client record-keeping.

The use of computer technology presents perhaps one of the most current issues facing the counseling profession with the increased use of electronic record-keeping devices. Client confidentiality must be protected, and the apparent ease with which computers can be accessed poses some consideration for the practitioner. Electronic record-keeping may be the most convenient way to keep client notes but strict precautions must be made in order to prevent breaches of confidentiality, particularly access by unauthorized persons. The counselor remains accountable for any such breaches. Until computer files are free from illegal access, perhaps such record keeping should not be used in this field where confidentiality is the precondition for successful treatment.

Role of the School Counselor

The professional duties of school counselors have become multidimensional. The traditional role of the school counselor facilitating the remediation of developmental issues and supervising standardized testing are becoming practices of the past. School counselors now have a range of clients, from differing backgrounds, with a greater complexity of issues, coupled with a greatly increased demand for guidance and counseling services. One reality which has remained the same over time has been the fact that school counselors continue to practice to a great degree, in isolation from other counseling professionals. Counselors who are not supported and encouraged by colleagues run the risk of falling into professionally inappropriate practices, and stagnating relative to their growth and development (Boyd & Walter, 1975).

School counselors have become aware of the possibility for inquiry into their professional practice and legal action related to counseling duties. These issues are unfortunately, an increasing phenomenon in counseling. School counselors need to have a range of professional support available to them to safeguard against legal action. This may include, but is not limited to, peer support, legal instruction, managerial considerations, clinical supervision, and in some cases personal counseling. In the review of the literature on legal and ethics issues related to counseling a wealth of information emerged. This is a reflection of the interest and need for regular review of these sensitive issues.

The school counselor often has responsibility for behavior management, student appraisal, guidance programs, resource coordination, administration, clerical duties, consultation, professional development, as

well as individual and group counseling (Partin, 1993). These duties include involvement with children, teachers, parents, administrative personnel and professionals external to the school system. The American School Counselor Association (1990) identifies that school counselors use the three generally recognized processes of counseling, consultation and coordination to implement a comprehensive developmental program. This demanding role requires that school counselors monitor their personal functioning, professional practice and review their effectiveness (ASCA, 1992).

School counselors are similar to their colleagues in clinical settings in that they aim to spend much of their time involved with personal counseling. It has been suggested that school counselors should spend about 70% of their time involved in counseling duties (Farwell, 1961). In contemporary times, the multiplicity and diversity of duties that school counselors must deal with has reduced the length that practitioners can spend on personal counseling. Recent data suggest that school counselors spend over 40% of their time involved in counseling (Partin, 1993). With this percentage spent on counseling and the remaining time involved with other emotionally delicate duties, it is imperative that school counselors maintain contact and supervision with appropriately qualified personnel.

Supervision as a Safeguard

Supervision is a crucial part of the professional support for counselors. Bernard and Goodyear (1992) suggest that supervision serves three basic and important purposes. Firstly, supervision ensures that those entering the profession have appropriate fundamental skills. Secondly, it enhances the functioning of counselors, and finally it ensures the quality of service to clients. The supervisor needs to be competent not only in the process of

supervision and the specific issues within the educational setting, but also aware of the particular preference school counselors have for supervision, which tends to be quite directive (Usher & Borders, 1993).

The variety of tasks that are required of school counselors makes it essential that support is provided by the employer. This support should include training, consultation, professional development, and counseling or clinical supervision. These approaches aim to offer support to the school counselor while also developing competencies. The provision of supervision for professional support can facilitate effective service delivery for the school counselor while simultaneously ensuring quality control for the employer and the public. It is via regular contact with a supervisor that will stand the counselor in good stead against criticism of improper conduct.

The school counselor may at times be in a situation of having to deliver counseling services in an area that they have minimal experience. In such cases the school counselor should call on the assistance of a more senior counselor who has experience to offer supervision, until an acceptable level of ability is developed by the counselor. This has obvious advantages at a time when society has become so professionally demanding and litigious. The employer must take responsibility for the provision of supervision for the school counselor particularly since it is from professional duties that the need for supervision arises, and it is the employer who may be responsible for professional practice.

Supervision has been seen by authors as encompassing various forms (Barret & Schmidt, 1986; Roberts & Borders, 1994). The commonality that exists centers around the name and function of two types, clinical supervision and administrative supervision (Barletta & Davis, 1994).

Clinical Supervision

Clinical supervision refers to the ongoing intervention provided by a trained and experienced professional, who simultaneously aims to enhance the counselor's skills and deals with issues related to counseling practices (Bernard and Goodyear, 1992). The supervisor monitors the appropriateness of the counselor's practice while also serving as a preceptor of the profession. These two roles of ensuring the quality of services as well as the development of the counselor can be a challenging task for the supervisor. Clinical supervision enables a counselor to have a supportive colleague help them examine their counseling practices and ensure the standard of care is congruent with best practices.

In recent years these issues have gained increasing attention via writing in the area of standards of care (Barletta, Beamish, Patrick, Andersen, & Pappas, in press). A standard of care is defined as professional conduct as practiced by reasonable and prudent practitioners who have special knowledge and skills for the diagnosis and treatment for clinical conditions (Witmer, 1991a). These standards of care provide the benchmark for the assessment of comparative treatments.

Clinical supervision should be carried out by a counselor who has appropriate training in supervision methods and techniques, due to the clinical nature of the role, and the reality that supervision is now recognized as a professional specialty (ACA, 1994; ACES, 1993; Dye & Borders, 1990). Writers have indicated that counselors should be supervised by personnel of the same profession, not merely another mental health practitioner or a noncounseling individual (Barret & Schmidt, 1986; Schmidt & Barret, 1983).

Administrative Supervision

The second form of support for school counselors is administrative supervision. The goals of administrative supervision are different from those of clinical supervision in that the former is involved with organizational and procedural issues rather than counseling and interpersonal issues. Administrative supervision includes the management of areas such as program evaluation, fiscal issues, regulations, time considerations, record keeping, role and function, professional development, resource allocation and other organizational topics.

Unlike clinical supervision, administrative supervision does not have to be conducted by another counselor, but could be managed by the principal or a member of the school administrative team. The function of administrative supervision relates to management issues, hence a school administrator would be the preferred option for this role as they would be able to deal with the issues raised in administrative supervision. Whereas the process of clinical supervision would ensure the counselor's practice is professional and ethical, administrative supervision would focus to address more immediate and mundane issues.

Current Practices

It has been established that supervision related to clinical practice must only be conducted by appropriately qualified counseling supervisors (Bernard & Goodyear, 1992). It is possible that administrators without guidance training to have supervisory responsibilities of guidance programs which include counseling. This issue has been raised in research which found that supervisors in many cases are noncounseling personnel, and that school

counselors believe they receive insufficient supervision (Barret & Schmidt, 1986; Borders & Usher, 1992; Wilson & Remley, 1987).

Roberts and Borders (1994) found that few school counselors were receiving clinical supervision yet many reported they were receiving administrative supervision. Counselors reported that the preferred scenario would include more clinical supervision than administrative supervision. Reports from school counselors indicate they find clinical supervision revitalizing as they review and discuss clinical practice (Henderson & Lampe, 1992). It is obvious many current supervision practices fall short of desirable standards, and this raises a host of legal, ethical and professional issues (ACA, 1994; ACES, 1993). If school counselors want to minimize the risk of allegations and malpractice, they must receive professional support from qualified personnel. Such personnel should be provided within the education system or accessed from community resources.

Conclusion

Legal and ethical issues have received attention in the counseling literature for over two decades. Likewise supervision for school counselors has been on the agenda for many years. It has been suggested that until national expectations are established for the supervision of school counselors, other mental health professionals will remain critical of the standards of those delivering counseling services in schools (Barret and Schmidt, 1986). A structured approach to supervision is imperative to facilitate this process of increased professional credibility.

Some school counselors need to develop a broader scope of competence than is currently the case. School counselors are highly trained professionals who should feel confident in dealing with the range of mental and emotional

issues that affect children and adolescents. Professional competence in new areas can be developed initially via formal academic or in-service training. In the work setting newly acquired skills can be nurtured and developed by a supervisor who has some expertise. In this scenario, the supervisor may perform the role of teacher, coach, consultant and mentor.

Quality supervision does not happen by chance. Effective clinical and administrative supervision is the result of strategic planning by counselors, supervisors and administrators working in partnership. The aim of such collaboration is to find a practical and professionally appropriate process of supporting the school counselor in the workplace. Without a well defined approach to supervision the counseling services within the school context are destined to remain out-of-step with best practices. School counselors should demand support services commensurate with their training, responsibilities and other counseling colleagues.

Supervision must be seen as an integral component in the practice of counselors. Whether the counselor is in an educational or a clinical setting the legal and ethical issues remain similar. Borders and Usher (1992) found that irrespective of work setting, the majority of counselors desire regular supervision. Clinical supervision, administrative supervision and consultation are important and should be encouraged and supported by the employer. Considerations of time, personnel and cost should also be the responsibility of the employer.

Attention to legal and ethical issues is not an ancillary consideration, rather it is integral to a responsive, comprehensive and professional service to schools. School counselors must focus on their ongoing growth and skill development, and ensure professional competence (ASCA, 1992). In the

interim, self-awareness of clinical competence as well as referrals can be an aid to dealing with difficult cases (Ritchie & Partin, 1994).

It has been established that school counselors choose the profession because of a desire to help students as well as aiming to keep mentally challenged (Ribak-Rosenthal, 1994). If counselors continue to place client welfare foremost in their deliberations while simultaneously being aware of legal and ethical issues, it follows that the need for supervision will be high on the professional agenda. School counselors should take responsibility for communicating these specific needs to the appropriate personnel.

Implications

After a review of the issues, the following points are identified as significant and are offered for school counselors, supervisors, and administrators to consider in making decisions about professional practice relative to legal and ethical issues.

- There has been an increase in litigious behavior relative to the practice of counselors.
- The issues faced by school counselors are similar to those faced by mental health professionals in clinical settings.
- Counselors should familiarize themselves with the Code of Ethics, Standards of Practice, standards of care, and relevant state laws.
- The variety of tasks that are required of school counselors makes it essential that appropriate supervisory support is provided.
- Clinical supervision should be carried out by a counselor who has appropriate training in supervision methods and techniques, and clinical experience in the tasks being supervised.

- Administrative supervision is involved with organizational and managerial issues, and be conducted by a member of the school administrative team.
- School counselor competence in new areas can be gained via in-service training while in the work setting, newly acquired skills can be nurtured by a colleague or supervisor until expertise develops.
- Counselors should consult with the professional association and legal counsel for advice when serious legal and ethical dilemmas occur.
- Counselors should update their understanding of legal and ethical implications of their professional practice.

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